IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7992 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANUBHAI KACHRABHAI

Versus

STATE OF GUJARAT AND OTHERS

Appearance:

MR JV BHAIRAVIA for Petitioner

MS KT DAVE, A.G.P.,for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/04/2001

ORAL JUDGEMENT

The petitioner was appointed as an Unarmed Police Constable on 25/5/1979. It appears that because of some domestic problems the petitioner was not keeping good health which had affected his mental condition. It is the say of the petitioner that because of these

difficulties, he went to his native place and forwarded a leave report to Respondent No.3 but he was neither granted leave nor refused leave. It is further stated that the petitioner was repeatedly asked to resume duties but because of his mental condition he could not resume duties and in view of these, a Criminal Case was filed against the petitioner under Section 145(2) of the Bombay Police Act bearing Criminal Case No.64 of 1987. In the said criminal case the petitioner was held to be guilty and was convicted and fine levied on 28th February, 1987. In view of the order of conviction and fine, Respondent No.3 issued a show-cause notice on 25/9/1987 calling upon the petitioner to submit his reply within a period of 10 days. The petitioner because of his physical and mental ill-health did not submit any reply and his services were terminated by order dated 12th January, 1988. The petitioner was required to file an appeal against the said order within a period of 60 days under the Bombay Police Punishment and Appeal Rules, 1956 but the said appeal came to be filed only on 4th July, 1988. The appeal came to be dismissed as being barred by limitation and that there were no valid ground for condonation.

2. The petitioner has challenged the aforesaid order of dismissal dated 12th January, 1988 as well as Order in Appeal dated 28th September, 1988. From the order dated 28th September, 1988 (Annexure 'D') of the Appellate Authority, we find that the petitioner was served with second show-cause notice dated 3rd November, 1987 calling upon him to reply within a period of 7 days and the Appellate Authority has stated that the petitioner had not responded to the said show-cause notice also. It is further observed by the Appellate Authority that the petitioner has stated that he could not respond to the show-cause notices because of his physical and mental ill-health, but that the appellant has not produced any proof in support of the same.

3. The petitioner has averred in the petition that he was never served with the second show-cause notice and moreover the Appellate Authority did not grant him an opportunity of hearing before passing an adverse order. In view of the peculiar facts and circumstances of the case we feel that the order of Appellate Authority which has been passed without hearing the petitioner requires to be quashed and set aside. We direct accordingly. The Appellate Authority shall issue a notice to the petitioner and grant him full and proper opportunity of presenting his case and taking into consideration the facts and circumstances of the case pass an order according to law including condonation of delay. The

petitioner shall appear before the Appellate Authority and represent his case as and when called upon to do so.

4. The petitioner has further pointed that in case of one Sahebsingh Bindra, an Unarmed Police Constable who had remained absent continuously for 7 years, though he was punished under Section 145(2) of the Bombay Police Act and was fined after conviction, yet he was not dismissed from service. The Appellate Authority shall also keep this case in mind while disposing the appeal of the petitioner.

5. In view of what is stated hereinbefore the order dated 28/9/1988 passed by the Appellate Authority is quashed and set aside. The petition is allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

(D.A. Mehta, J)

'Bhavesh'